



**Department of Energy**  
Washington, DC 20585

**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of: XXXXXXXXXXXXX

Filing Date: April 2, 2020

Case No.: PAA-20-0002

Issued: April 20, 2020

**Decision and Order**

On April 2, 2020, XXXXXXXXXXXXX (Appellant) appealed a Determination Letter issued to him from the Department of Energy's (DOE) Savannah River Operations Office (SRO) regarding Request No. SRO-2020-00295-PA. In that determination, SRO responded to a request filed under the Privacy Act, 5 U.S.C. § 552a, as implemented by DOE regulations set forth at Part 1008 of Title 10 of the Code of Federal Regulations, in which Appellant sought his health and industrial hygiene records, as well as records regarding chemicals, materials, and safety procedures used at DOE's Savannah River Site in 1987 and 1988. SRO provided Appellant with his health and industrial hygiene records but withheld Personally Identifiable Information (PII) about other individuals claiming that it did not fall within the scope of the Privacy Act. The Appellant challenged the decision to withhold the records regarding the chemicals, materials, and safety procedures. In this Decision, we deny the Appeal.

**I. BACKGROUND**

On January 7, 2020, Appellant filed a Privacy Act request with DOE, requesting copies of documentation of radiation information and the content of the material/chemicals in several tanks, diversion boxes, and pump pits, as well as a cell decontamination building, at the Savannah River Site. He also requested his Occupational and Industrial Health Records, his Radiation Exposure Report, and the date on which the Savannah River Site and its contractors began requiring that TLD badges be worn. The time period for the requested records was 1987 to 1988.

SRO bifurcated the request into a Privacy Act request, for records it deemed within the purview of the Privacy Act (i.e., his health and industrial hygiene records), and a Freedom of Information Act (FOIA) request, for records it saw as falling within the FOIA's purview (the requested radiation

and chemical environmental records).<sup>1</sup> It is important to note that this appeal concerns only the part of the original request processed under the Privacy Act. The part of the original request deemed a FOIA request is a separate request and is not at issue here.

After performing a search, SRO located hundreds of pages of records responsive to the Privacy Act request and redacted PII pertaining to any individual other than the requester. On February 26, 2020, SRO distributed the redacted copies of the records to Appellant with a determination letter explaining its reasoning in making redactions. Appellant appealed SRO's determination on April 2, 2020,<sup>2</sup> arguing that he had a right to know the information requested because he may have been exposed to chemicals while working at the Savannah River Site. He also stated that he did not want PII about any other person.

## **II. ANALYSIS**

Appellant specifies that he does not contest the redaction of others' PII from the documents he received, but rather the omission of records regarding the chemicals and materials at the Savannah River Site and the date on which TLD badges were required. A record subject to disclosure under the Privacy Act is "any item, collection, or grouping of information about an individual that is maintained by an agency." 5 U.S.C. § 552a(a)(4). The key component of a Privacy Act record is that the individual is the subject of the record. The Privacy Act provides a list of covered types of records "including, but not limited to, [an individual's] education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph." *Id.* Furthermore, the Privacy Act only covers those records about an individual that an agency can locate using the individual's PII. 5 U.S.C. § 552a(a)(5); 5 U.S.C. § 552a(d).

The records at issue here are not Privacy Act records because their subjects, the chemical and material compounds found onsite and dates on which safety procedures were implemented, are information about Savannah River Site, not the Appellant, and because they could not be located using the Appellant's PII. The Privacy Act does not require agencies to process improper Privacy Act requests. DOE's Privacy Act regulations specifically state that DOE is not required to furnish "information or records that are not retrieved by the name or by some other identifying number, symbol or identifying particular of the individual making the request." However, when records requested under the Privacy Act are subject to the FOIA, agencies may process such requests according to the FOIA, which is what SRO chose to do in this case.

## **III. CONCLUSION**

The records at the heart of this appeal are not subject to release under the Privacy Act. Therefore, SRO was legally obligated to deny the Privacy Act request for those records. However, we note that SRO is currently considering the records at issue as the subject of a FOIA request, which it is

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<sup>1</sup> It is unclear whether this process was explained to the requester.

<sup>2</sup> We take judicial notice that the determination letter incorrectly included the appeal information for FOIA requests. However, as Appellant was still able to properly file a timely appeal and did not object to the incorrect language, we hold that this error was harmless and does not require remand or remedy.

handling separately. We note that SRO has indicated that it will send the Appellant a FOIA determination letter regarding the requested radiation, safety, and chemical environmental records.

#### **IV. ORDER**

It is hereby ordered that the Appeal filed on April 2, 2020, by XXXXXXXXXXXXX, No. PAA-20-0002, is denied.

This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552a(g)(1)(B) as limited by 5 U.S.C. § 552a(g)(5). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between record seekers and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect the right to pursue litigation. OGIS may be contacted in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS, College Park, MD 20740  
Web: <https://www.archives.gov/ogis> Email: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: 202-741-5770 Fax: 202-741-5769 Toll-free: 1-877-684-6448

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals